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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

PUBLIC INTEREST LITIGATION NO.26 OF 2024

Sandeep S. Thakur

Aged: 73 years, Occ: Social Active

Indian Inhabitant residing at F8/RH6/

Sector 6, Vashi, Navi Mumbai, 400703.

... Petitioner

V/s.

1. State of Maharashtra
Through it's Urban Development
Department, Through the
Government Pleader High Court
Bombay.
2. Navi Mumbai Municipal
Corporation, having it's Head
Quarters at CBD Belapur, Navi
Mumbai, 400 614.
3. Sagar Co-operative Housing
Society Ltd., Condominium No.8,
Sector 10, Kopar Khairne, Navi
Mumbai.
4. Seaview Residency Cooperative
Housing Society Ltd., Plot No.3,
Condominium No.3, Sector 6,
Vashi Navi Mumbai.
5. Shraddha Cooperative Housing
Society Limited Condominium No.10
Building No.22 to 44, Plot No.10,
Sector 10, Vashi, Navi Mumbai.
6. Ekta Cooperative Housing
Society Limited, Condominium No.5,
Building Nos.1 to 18, Plot No.5,
Sector 9, Vashi, Navi Mumbai.

7. Kailas Shikhar Cooperative
Housing Society Ltd., Condominium No.8,
Building No.19 to 45, Plot No.8,
Sector 9, Vashi, Navi Mumbai. ... Respondents

**WITH
INTERIM APPLICATION NO.4772 OF 2026
IN
PUBLIC INTEREST LITIGATION NO.26 OF 2024**

Mr. Sandeep S. Thakur, Petitioner in person present.
Mr. O.A. Chandurkar, Addl. G.P. a/w Ms. R.A. Salunkhe, A.G.P. for the Respondent-State.
Mr. Tejas Dande a/w Mr. Bharat Gadhavi, Mr. Parth Talekar for the Respondent No.2-NMMC.
Mr. Saket Mone a/w Mr. Shrey Shah, Ms. Mitali Dhoble i/b Vidhii Partners for the Respondent No.3.
Mr. Girish Godbole, Senior Advocate a/w Ms. Aneesa Cheema, Mr. Parag Kabadi, Ms. Vidhi Porwal, Ms. Anshita Sethi i/b DSK Legal for the Respondent No.4.
Mr. Chetan Kapadia, Senior Advocate a/w Mr. H.K. Sudhakara i/b HKS Legal for the Respondent No.5.
Mr. Rahul Sarda i/b Ms. Virakthi Hegde for the Respondent No.6.
Mr. Chetan Kapadia, Senior Advocate i/b Ms. Atithi Abhay for the Respondent No.7.

**CORAM : A. S. GADKARI AND
KAMAL KHATA, JJ.
RESERVED ON : 6th July, 2026.
PRONOUNCED ON : 1st October, 2026.**

Judgment (Per : Kamal Khata, J) :-

- 1) By this Petition under Article 226 of the Constitution of India, the Petitioner seeks a writ of Mandamus, directing the Respondent Nos.1 & 2 to quash and set aside the development permissions issued by them to

Respondent Nos. 3 to 7.

2) The Petitioner is an Indian citizen residing at Navi Mumbai since 1980. He retired in 2019 as a Vice-President in a multinational British Company and is now involved in taking up social causes concerning Navi Mumbai. He claims to have been a member of the Advisory Committee formed by the Navi Mumbai Municipal Corporation ('NMMC') and that his work has been appreciated by this Court in several cases.

3) The present Petition concerns providing open-to-sky Recreational Open Spaces ('ROS') as per the Unified Development Control and Promotion Regulations, 2020 ('UDCPR').

Petitioner's submissions:

4) Mr. Sandeep Thakur, appearing in person, referring to the various provisions of the UDCPR, submits that, the provisions contained in Regulation 10 override all other regulations in the UDCPR, including Regulation 3.4, in view of the *non obstante* clause contained therein. According to him, the reconstruction/redevelopment of buildings in CIDCO/ NMMC areas which include buildings constructed by CIDCO but subsequently destroyed by natural calamities or accidental fire or which have collapsed due to age or are demolished or being demolished under lawful order of the Municipal Commissioner etc. is required to be carried out as per the provisions of Regulation 10.10.2 of the UDCPR.

5) He submits that, Regulation 10.10.2, read with Clause 3 and sub-clause (vi), requires that, in a condominium/plot area, a minimum of 10 or 15%, as the case may be, is required to be kept as compulsory ROS on ground, clearly open-to-sky, over and above podium garden, in the proposed redevelopment project, in respect of land area between 2500 square meters to 4000 square meters or more than 4000 square meters respectively. However, NMMC has granted surplus benefits to the Developers by permitting them to refrain from providing 15% of the plot area as ROS on the ground, clearly open-to-sky, in addition to the podium gardens, for extraneous reasons. According to him, granting such a concession from a mandatory provision under the Regulations governing development of NMMC is impermissible in law.

6) He submitted that his RTI Application seeking information was evaded with a vague reply dated 26th December 2023, stating that the questions did not fall under the definition of 'information'. Instead, a tabulated list of development permissions issued to twelve Developers was provided. Table 1 listing Developers with a plot area of over 1000 square meters and Table 2 listing Developers with a plot area of about 4000 square meters. The information provided did not include the crucial list of Developers with plot area between 2500 to 4000 square meters. Dissatisfied with the response, he filed an Appeal, pursuant to which the PIO furnished information disclosing that NMMC had mandated only two of the seven

plot-holders to provide ROS under Regulation 10.10.2, while the remaining namely, Respondent Nos.3 to 7 were granted a concession permitting them to provide ROS as per Regulation 3.4.1.

7) According to him, granting such concessions would leave residents of plots without adequate open-to-sky ROS of their own, compelling them to rely on public ROS in the vicinity. This, he submits, would increase footfall in such public ROS and disturb the orderly town planning contemplated under the UDCPR. It is in these circumstances, and for seeking a direction for withdrawal of the concessions granted to Respondent Nos 3 to 7, that he has filed the present Public Interest Litigation.

Respondents submissions:

8) By Mr. Godbole, learned Senior Counsel appearing for the Respondent No. 4 society, submitted that in 1975, CIDCO constructed sixteen buildings consisting of ground plus 2 upper floors totaling to 288 apartments with areas of 16.9 square meters, 17.3 square meters and 18.5 square meters. These buildings were declared dilapidated on 19th June 2019 and were required to be redeveloped. NMMC sanctioned a plan for 3 wings A, B and C, comprising of total 314 units, including rehab, sale, and CIDCO/NMMC units. The following permissions were received:

1. Letter of Intent (LoI) dated 6th July 2022

2. Environmental Clearance (EC) dated 30th August 2022
3. Full Commencement Certificate (CC) dated 25th January 2023
4. Revised CC dated 14th August, 2023
5. Completion Certificate issued by architect for wings A and B dated 11th June, 2026 and

9) The current status is as under.

1. For wings A and B (comprising of 67 units each, of which three units are for rehabilitation), RCC work is completed and interior work is in progress.
2. For wing C, comprising of 314 units, of which 285 units are for rehabilitation and the balance 29 units are for CIDCO and NMMC, construction is complete in all respects and application for obtaining Occupation Certificate (OC) will be made upon obtaining various NOCs from CIDCO and NMMC.

10) Mr. Godbole submits that, owing to the planning constraints, it was not possible to provide the entire ROS on ground and an application for exercise of discretion under Regulation 2.4 for grant of relaxation was made, explaining the following planning constraints:

1. The height of the new buildings had to be restricted to 130 meters.
2. A road setback of 124.087 square meters was required to be surrendered to NMMC free of cost, reducing the ground coverage.
3. Rehabilitation tenements for the original 288 members, with

minimum carpet area of 300 square feet (Regulation 10.10.2.2(A)), were mandatory. In addition, 29 units were to be constructed for CIDCO/NMMC.

4. Parking Spaces for two-wheelers and four-wheelers for 449 units was to be constructed under UDCPR (696 four-wheeler parking spaces plus 519 two-wheeler parking spaces).

11) Mr. Godbole submitted that 15% of the net land area of 7428.853 square meters works out to about 1114.328 square meters, which was required to be provided as ROS. He submits that a higher area of ROS is presently provided, an area of 1264.693 square meters on the 6th floor podium level and an area of 146.118 square meters on the ground floor. Additionally, a clubhouse (a permitted amenity within ROS) of 317.509 square meters (ground plus one floor) is provided. In addition to the above, an area of 468.81 square meters is provided on mother earth in the form of 1.5-meter-wide strip. This is in consonance with Regulation 3.4.1 (iii) read with Regulation 2.4 and Regulation 10.10.2(iii)(vi). In the present case, the relaxation sort was only for fragmenting the RG area, and not to reduce the RG area to be provided under the UDCPR. He submitted that a perusal of the sanctioned plan as well as the EC certificate, shows that the required RG area under the UDCPR has been provided.

12) He submitted that, the PIL essentially challenges the development permissions granted purportedly in violation of Regulation

10.10.2 Clause (3) sub-clause (vi) of the UDCPR namely, that permitting compulsory ROS on podium would allegedly cause crowding in public places, violating the public interest. He submitted that this contention is a bare allegation with no factual foundation and the assertion that occupants of the project would crowd public open spaces if ROS is not provided on mother earth is entirely baseless.

13) Referring to the Petitioner's contention that, Regulation 10.10.2 (iii)(vi) contains a *non obstante* clause and thus overrides all other UDCPR Regulations, including Regulations 2.4, 3.4.1, 3.4.7 and 9.13, Mr. Godbole submitted that, this contention is wholly meritless. He submitted that if Regulation 2.4 were held inapplicable on account of the *non obstante* clause, the entirety of Chapter 10 would become unworkable. The word "notwithstanding" in Regulation 10 cannot be read as excluding all other provisions of the UDCPR. Instead, it must be read for harmonious construction of the Regulations, applying only where a provision in Chapter 10 conflicts with another provision of the UDCPR. He referred to the decision of the Supreme Court in the case of *Mohd. Abdul Samad Vs. State of Telangana & Another* reported in (2025) 2 SCC 49 paragraphs 81 to 87.

14) Mr. Godbole further submitted that, Regulation 10.10.2 (iii)(vi) must be read harmoniously with the other provisions of Chapter 10. The only inconsistency between Regulation 3.4.1(iii) and 10.10.2 (iii)(vi) is that, in non-CIDCO areas, ROS is required if land is less than 4000 square

meters, with only 10% required for land of area 4000 square meters, whereas in CIDCO areas 10% is required once land exceeds 2500 square meters, rising to 15%, once it exceeds 4000 square meters. Thus, the *non obstante* clause bears only this restricted meaning, as explained by the Hon'ble Supreme Court.

15) He submitted that, discretion conferred by Regulation 2.4 of UDCPR must be exercised on a case-to-case basis. The crucial words 'over and above podium garden' have to be read in context: once so read, the intention of subordinate legislation is clear where a larger ROS is mandated and has to be provided on podium, the minimum required ROS must be "clearly open to sky" even where it is on "ground over and above podium ground". Thus, when Regulations 3.4.1(iii), 3.4.7 and 9.13 are read together, they already provide for 100% ROS to be provided on podium, provided that it is entirely open to sky. Therefore, a holistic reading of Regulations 10.10.2 (iii)(vi), 9.13 , 3.4.1 (iii) and 3.4.7 together with Regulation 1.3 (103) makes it evident that, the words "over and above podium garden" permit the entire ROS to be provided on the podium, subject to a podium garden also being provided. He placed reliance on the decision in the case of *Vijay Shantaram Mandavkar and Others Vs. State of Maharashtra and others reported in (2015) 3 Mah LJ 198*, where, interpreting Regulation 64 of DCR 1991, the Division Bench held that in a redevelopment project where rehabilitation tenements are to be provided

free of cost, developer is required to construct a much larger area and open space will necessarily be less than it would be under the normal Regulation with 1.33 FSI. In that case, the Division Bench distinguished the earlier judgment in case of *Rajendra Thacker & Others Vs. Municipal Corporation of Greater Mumbai & Others* reported in 2004 SCC OnLine Bom 401.

16) With regard to the reliance placed by the Petitioner on Order dated 13th September 2022 passed by the National Green Tribunal (NGT), Mr. Godbole submitted that, the Environmental Clearance for redevelopment of the said land was issued on 30th August 2022, and the said order would therefore have no application in the present case. According to him the NGT's Order dated 13th September 2022, cannot apply retrospectively and would not apply to the redevelopment of the lands of Respondent No. 4. He further argued that reliance placed on the judgment of the Hon'ble Supreme Court in *Municipal Corporation of Greater Mumbai and Others Vs. Kohinoor CTNL Infrastructure Private limited & Another* reported in (2014) 4 SCC 538, was misplaced, since that case concerned a conflict between two provisions, whereas once the subordinate legislation, the UDCPR, has intervened, the said judgment cannot, according to him, be held applicable to the present case.

17) In view of the aforesaid Mr. Godbole submitted that, the provisions of UDCPR have to be read harmoniously and not in contravention of one another. He submitted that, the word

‘notwithstanding’ in Chapter 10, which is a City Specific Regulation, cannot be read to exclude the application of the general Regulations contained in Chapters 1, 2 and 3. That, the general provisions of the UDCPR continue to apply even to City Specific Development under Chapter 10, to the extent that those Regulations are not in contravention of one another. That the Petitioner had failed to demonstrate any contravention in the application of Regulations 2.4 and 3.4 to the development in case of NMMC/CIDCO area. He further submitted that, the Petitioner had failed to demonstrate any perversity in the exercise of powers under Regulation 2.4 by a planning authority, which is an executive function, such as would warrant any intervention by this Hon’ble Court. He accordingly submitted that, the present Petition ought to be dismissed.

18) Mr. Godbole submitted that, the Petition also suffers from delay and latches. The Respondent No. 4 had obtained an LoI on 6th July 2022, Environmental Clearance on 30th August 2020, a Commencement Certificate on 25th January 2023 and a Revised Commencement Certificate was issued on 14th August 2023 and substantial construction, including excavation had taken place before the filing of the Petition on 13th February 2024. He relied upon the decision of the Court in PIL No. 24 of 2019 to submit that, a similar Petition filed by the same Petitioner was dismissed, with observations in paragraph 11 to 13 therein stating that the averments in the PIL were vague and was hit by delay and latches. The

Court also held that the need for environment protection must be weighed against the legitimate needs of the community at large, and that the Court cannot overlook the serious prejudice that would be caused to the home buyers. It further held that, in the absence of any public interest, the Petition deserves dismissal with costs.

19) Mr. Kapadia, learned senior counsel appearing on behalf of Respondent Nos. 5 to 7 submitted that, he adopts the arguments of Mr. Gobdole. He submitted that, the foundation of the Petition was on the contention that, the ROS/recreational ground is required to be provided on mother earth and is impermissible on the podium. He submitted that, it is therefore, not the case of the Petitioner that, no ROS has been provided in the redevelopment project, but that the grievance is that such ROS has not been provided on the ground.

20) Mr. Kapadia submitted that, the Petition does not raise any matter of public interest. According to him, any alleged public interest is remote, indirect and minimal as compared to the direct and substantial interest of the members of the Respondent Nos. 5 to 7 in completion of their homes. He submitted that, if the orders sought by the Petitioner were passed they would result in a huge human cost to the members of Respondent Nos. 5 to 7, without any direct benefit to the public interest purportedly espoused by the Petitioner. He submitted that the contention that, residents of Respondent Nos. 5 to 7 would have no recourse but to

flock to the already overburdened public ROS nearby, thereby affecting the quality of life of innocent ordinary citizens in the area, if ROS is not provided on the ground, is wholly unsubstantiated and has no basis in either law or fact. He submitted that the description/definition of ROS contains no reference to natural ground, mother earth, virgin soil, or at grade location and no prohibition against provision on the podium. Such a qualification, not being statutorily prescribed, cannot be read into or freshly introduced or deemed to be included in the description/definition of ROS. He submitted that where a statute or a set of regulations contains two different definitions or similar expressions, the settled rule is that the legislature is presumed to have intended different meanings and Courts ought not to treat the expressions as interchangeable unless the statutory context compels it.

He submitted that, the UDCPR confers discretionary powers enabling relaxation in specific cases, as provided under Regulation 2.4, which applies to all provisions of the UDCPR.

21) Mr. Kapadia submitted that, the grant of concession does not, in law, amount to a grant of exemption and that the grant of concession is a necessary ingredient of a planning discretion. He further submitted that, the principle of harmonious construction requires that full effect be given to all the provisions to the extent possible, and that there was no dilution of public interest as a result of the grant of concession to Respondent Nos. 5 to

7 societies.

22) He submitted that, the grant of concession in the present case is the result of a reasoned, considered and necessary exercise. According to him, the grant of concession to provide ROS at the podium level was intended to ensure compliance with the requirement of providing open spaces in a redeveloped plot, and was not in violation of any health, safety, fire safety, structural safety or public safety requirement affecting the inhabitants of the buildings or the neighborhood. Read in totality, the grant of concession was not an act beyond jurisdiction. He submitted that Regulation 10.10.2(iii)(vi) applies only condominiums and not to cooperative housing societies, and would therefore not apply in the present case, as Respondent Nos. 5 to 7 are cooperative housing societies and not condominiums.

23) Mr. Kapadia submitted that, the members of Respondent Nos. 5 to 7 belong to the lower-income group/economically weaker section and could not afford to either shift to different residential houses or undertake reconstruction/repairs. He submitted that although the buildings were declared unfit for habitation as far back as 1997, no redevelopment could be undertaken for want of viability. The buildings were declared as dangerous and placed under C-1 category as far back as 2017 and it was only after the introduction of UDCPR that the redevelopment was possible. He accordingly submitted that the Petition itself was delayed and ought to

be dismissed on the ground of delay in latches, and for want of bona fides. He relied upon the decision in *R & M Trust Vs. Koramangala Residents Vigilance Group and Others* reported in (2005) 3 SCC 91 where the Supreme Court refused to grant relief in a PIL in which building construction was substantially complete, on the ground that the PIL Petitioner's delay had caused substantial third-party rights to be created in the meantime. He submitted that, the Petitioner has selectively targeted Respondent Nos. 3 to 7 societies and has not prayed for cancellation of all permissions granted by applying Chapter 3 of UDCPR within the municipal limits of NMMC. In support of his above contentions, Mr. Kapadia placed reliance on the following judgments:

1. *P. Kasilingam and Others Vs. P.S.G. College of Technology and Others* reported in 1995 Supp (2) SCC 348
2. *Board of Revenue Vs. Arthur Paul Benthall* reported in (1955) 2 SCC 195
3. *Sultana Begum Vs. Prem Chand Jain* reported in (1997) 1 SCC 373
4. *Pandurang D. Chalke and Another Vs. NGO Alliance for Governance and Renewal (NAGAR) and Others* reported in 2025 SCC OnLine Bom 2425

24) He accordingly submitted that, the Petition deserves to be dismissed.

25) Mr. Mone appearing for Respondent No. 3 society also adopted the arguments of Mr. Godbole and Mr. Kapadia. He drew the Court's attention to the facts of his case. He submitted that, the building of Respondent No 3 Society was constructed in 1990 under mass housing scheme called Demand Registration Scheme (DRS-87), and flats were allotted to members by draw of lots. Under the scheme, CIDCO constructed 47 buildings consisting of 188 residential tenements with a built-up area of 8724.74 square meters. Over time, the condition of the buildings deteriorated, and on 30th September 2019, the buildings were declared dangerous by NMMC/Respondent No. 2. The Respondent No. 3 society accordingly decided to re-develop its buildings. He submitted that, the plot area of Respondent No 3 society is 8166.38 square meters. The NMMC has issued an amended Commencement Certificate, having sanctioned the plans submitted by the developer on 12th March 2024, in accordance with Regulation 10.10.2 of the UDCPR, read with Section 253 and 254 of the Maharashtra Municipal Corporations Act, 1949 (MMC Act) and Section 45 of the Maharashtra Regional and Town Planning Act, 1966 (MRTP Act). The 15% RG comes to 1,224.957 square meters. However, the Respondent No.3 society has provided 1,275.17 square meters on the ground level, open to sky. Additionally, Respondent No.3 society has also provided 2,503.229 square meters of RG on the 4th floor of the new building. The total RG provided is thus 3,778.399 square meters.

26) Mr. Mone submitted that, various factors affect these societies in carrying out the redevelopment under the existing framework of the UDCPR, rendering the project unviable from both, a commercial and a planning perspective. Various factors including height restrictions arising from proximity to Navi Mumbai International Airport, and mandatory parking requirements under the UDCPR, which result in an oddly sized and shaped parking floor consequent planning constraints. According to him, several other societies face similar hardships in carrying out redevelopment work under the existing framework of the UDCPR. In view of these hardships, Respondent No.3 society, through its architect, addressed a letter dated 1st March 2024 to NMMC/Respondent No.2, seeking relaxation of certain DC regulations for the purpose of providing RG on ground. The Municipal Commissioner of NMMC considered representation and, exercising powers under Regulation 2.4 without compromising public or neighborhood safety, granted relaxation for RG being provided on the ground. This exercise of power by the Municipal Commissioner was reasonable and facilitated the smooth implementation of redevelopment project without compromising any safety concern. There is no averment in the Petition of arbitrariness on the part of the Municipal Commissioner in exercising this power. The discretion exercised was accordingly reasonable and requires no interference. He relied on the factual aspects by three tables which are extracted hereinbelow for ready reference.

“11. The Developer has, till date, spent approximately 225 crores on the redevelopment project which also involves construction of around 188 flats for rehabilitation of members of Respondent No.3 Society. The existing 188 members of Respondent No.3-Society are eagerly waiting for their redeveloped houses to accommodate their respective families. The status of construction as on date is as follows :

Project Name: The Trellis
Redevelopment of Sagar Co-operative Housing Society Limited
Condominium no.8, Sector-10, Koparkhairane, Navi Mumbai-400709

	Proposed	Construction Stage	
Wing A	G+25	26th Slab (Terrace) Completed	RCC Structure Completed Painting in process
		Walls, Internal Plaster, Staircase, Lift Well Structures completed	
Wing B	G+25	26th Slab (Terrace) Completed	
		Walls, Internal Plaster, Staircase, Lift Well Structures completed	
Podium	G+4	4th Completed	

12. The details of the existing old carpet areas of members and the RERA carpet areas of new flats is enumerated in a table below :

Table – Existing Old Carpet areas of members and New Flats RERA Carpet areas

Sr. No.	Type	No. of Tenements	Existing Flat Carpet Area (sq. ft.)	New Flat RERA Carpet area (sq. ft.)
1.	Type C – With Courtyard/ Terrace	66	343	740
2.	Type C	31	343	647
3.	Type C1	12	348	655
4.	Type C1 – With Courtyard/ Terrace	12	348	746
5.	Type D	35	370	694
6.	Type D1	3	376	705
7.	Type E – With Courtyard/ Terrace	16	472	969
8.	Type F- With Courtyard/	13	672	1269

	Terrace			
	Total	188		

13. The list of permissions obtained by Respondent No.3 are as follows :

Sr. No.	Particulars of Permission	Date
1.	Aviation NOC (1 st)	30.12.2019
2.	Fire NOC (1 st)	20.07.2022
3.	Environment Clearance	23.02.2023
4.	Commencement Certificate	29.03.2023
5.	Amended CC (1 st)	12.03.2024
6.	Aviation NOC (2 nd)	07.11.2025
7.	Fire NOC (2 nd)	21.01.2026
8.	Amended CC (2 nd)	06.05.2026

14. The details about the “Third Party Rights” created as on date are as follows :

	No. of units	Sold & Registered	Sold & not Registered
Society Rehab	188	188	
CIDCO/NMMC	14	Authority	
Amenity NMMC	1	Authority	
<u>Developers Units</u>			
Residence	215	105	9
Shop	14	7	7
Total	432	300	16
<u>Note :</u>	Out of 432 nos. of units in the project, 316 units have been booked/sold registered/owned by Authority		

27) Mr. Mone submitted that, the present PIL is not bona fide and that it is in truth, a “publicity interest litigation”. He submitted that the Petitioner has failed to show any public interest involved in the present Public Interest Litigation or any violation of any law, legal injury or harm caused to the public. He submitted that, there was no causal connection with the redevelopment of Respondent No.3- society and the Petitioner,

who was a rank third party and that no benefit would accrue to the public even if the prayer sought in the present petition were granted. On the other hand, the members of Respondent No. 3 society would be grossly impacted. He submitted that, none of the members of Respondent No. 3 society have any complaint in respect of the work done by the developer for the present redevelopment. He finally submitted that, the Petitioner has adopted a pick-and-choose policy and has targeted only certain societies and redevelopments, an approach that has been strongly deprecated by the Court time and again. He submitted that, Respondent No. 3 society has executed a registered Development Agreement with one Maithli Builders Private Limited on 20th June 2022. The members of Respondent No.3 society vacated their existing premises in August 2022, and the existing buildings of Respondent No. 3 society were demolished between September to December 2022. Various permissions have since been obtained and the redevelopment work has commenced and is proceeding in full swing. The parties have therefore altered their position. The present Petition filed only on 12th February 2024, has thus been filed after a gross and unexplained delay and latches. He submitted that, the present Public Interest Litigation is also not in conformity with the Bombay High Court Public Interest Litigation Rules, 2010 inasmuch as the Petitioner has failed to disclose his annual income and PAN number as required under Rule 5(a). In view of the above, he submitted that, the Petitioner deserves to be dismissed with cost.

28) Mr. O. A. Chandurkar, learned AGP for the State, Mr. Tejas Dande, learned Advocate for Respondent No.2-NMMC and Mr. Rahul Sarda, learned Advocate for Respondent No.6 adopted the arguments of Mr. Godbole, Mr. Kapadia and Mr. Mone and opposed to the Petition.

29) We have heard the Petitioner as well as learned Counsel for all the Respondents and have carefully perused the record.

Analysis and Conclusion:

30) At the outset, the Petitioner's concern appears to reflect a genuine public interest. The underlying intent being to caution the architects, developers and the planning Authorities against misusing their knowledge and professional expertise to flout mandatory provisions and thereby unjustifiably secure concessions that defeat the legislature's intent of planned city development, and to warn them that such conduct will not go unnoticed and that those responsible will be held accountable.

31) In brief, the concern of the Petitioner is that the NMMC has permitted the mandatory open-to-sky ROS at the 'podium level' rather than the 'ground level' for a certain category of redevelopment projects, resulting in residents of those projects being compelled to utilize the public ROS, thereby increasing the footfall therein and upsetting the planned development / redevelopment of the areas under the UDCPR.

32) It would be appropriate and necessary to consider applicable provisions of the UDCPR in this regard.

33) By Notification No.TPS-1818/C.R.236/18/DP and RP/Sec.37(1AA)(c) & Sec.20(4)/(UD-13), dated 2.12.2020, Respondent No.1 sanctioned Development Control Regulations called UDCPR, applicable to all building activities and development works on land within the jurisdiction of the Planning Authorities and Regional Plan areas in Maharashtra, except as excepted under Regulation 1.1. For ready reference, the relevant provisions or portions or explanations are set out hereinbelow:

a) Regulation 1.1 Extent and Jurisdiction

i) These regulations shall apply to the building activities and development works on lands within the jurisdiction of all Planning Authorities and Regional Plan areas, except Municipal Corporation of Greater Mumbai, other Planning Authorities /Special Planning Authorities /Development Authorities within the limits of the Municipal Corporation of Greater Mumbai, MIDC, NAINA, Jawaharlal Nehru Port Trust, Hill Station Municipal Councils, Chikhaldara notified area (comprising of Chikhaldara Hill Station MC and four villages) Eco-sensitive /Eco-fragile region notified by MoEF and CC, and Lonavala Municipal Council in Maharashtra.

ii) These Regulations shall also be applicable to the Town Planning Scheme area. However this will not bar the Development Permission to be granted as per the Regulations of the Town Planning Scheme *in toto*.

Accordingly, the lands under the jurisdiction of NMMC are governed by the provisions of said UDCPR's from 2nd December 2020.

b) Chapter 10 contains City Specific Regulations. Regulation 10

reads as under:

"Notwithstanding anything contained in these Regulations, following City / Authority specific Regulations shall be applicable to respective Planning Authorities/Areas. "

c) Regulation 10.10.2 provides for the reconstruction / redevelopment of buildings in CIDCO/NMMC areas, Regulation 10.10.3 concerns 'Other requirements / Criteria and Regulation 10.10.2(3)(vi) in particular provides that:

"In a condominium/plot area, it shall be mandatory to keep minimum 10% or 15%, as the case may be, compulsory recreational open space on ground clearly open to sky over and above podium garden, in the proposed redevelopment project in respect of land area between 2500 sq.mt. to 4000 sq.mt. or more than 4000 sq.mt., respectively."

In our view this means that in a plot area measuring 2,500 sq. mt. a minimum of 10% which is 250 sq.mt. is mandated, whereas in a plot area measuring 4,000 sq.mt. a minimum of 15% which is 600 sq.mt. is mandated as recreational open space 'on the ground', 'clearly open-to-sky' and 'over and above podium garden'.

d) Chapter 3 of the UDCPR deals with the "General Land Development Requirements" and Regulation 3.4 specifically deals with the general requirements of Recreational Open Spaces (ROS) to

be provided while carrying out any development on any land. Under Regulation 3.4.1, for areas more than 0.40 ha., 10% shall be ROS which shall as far as possible be provided at one place and if land area is more than 0.8 hectares (8000 sq. m.), ROS may be provided at more than one place.

e) Regulation 3.4.1(iii) provides as under:

“Not more than 50% of such recreational open space may be provided on the terrace of a podium, in congested/non-congested area subject to Regulation 9.13.

Notwithstanding anything contained in the definition of "Recreational Open Space" in these regulations, such recreational open space to the extent of 100% may be allowed to be provided on the terrace of a podium if owner/developer provides 1.5 m strip of land along the plot boundary, exclusive of marginal distances, for plantation of trees.”

f) Regulation 1.3(103)

“Podium - means the floor of a building extending beyond buildings line/s and used for parking, recreational open space, recreation, fire and building services/utilities and incidental purposes, as specified in these regulations.”

g) Regulation 9.13:

“Podium for parking of the vehicles and other uses mentioned herein, may be permitted with following requirements/conditions:

(iv) Recreational open space may be permitted on Podium subject to regulation No. 3.4.1(iii). The

structure mentioned in Regulation No. 3.4.7 may be permitted over the podium on which recreational open space is provided, subject to 15% area of such recreational open space.”

- h) Regulation 3.4.7 deal with structures permitted in open spaces.
- i) Regulation 2.4 Discretionary Powers - Relaxation In Specific Cases:

“In specific cases where clearly demonstrable hardship is caused, the Authority may permit any of the dimensions/provisions prescribed by these regulations to be modified provided the relaxation sought does not violate the health safety, fire safety, structural safety, and public safety of the inhabitants of the buildings and the neighbourhood. No relaxation in the setback required from the road boundary or FSI or parking requirements shall be granted under any circumstances, unless otherwise specified in these Regulations.

While granting permissions under these regulations, conditions/restrictions/limitations may be imposed on size, cost or duration of the structure, abrogation of claim of compensation, payment of deposit and its forfeiture for non-compliance and payment of premium, as may be prescribed by the Authority, if required.

In areas of Municipal Councils and Regional plan, such relaxation shall be granted in consultation with concerned Divisional Joint Director of Town planning.

Notwithstanding anything contained in the Government Order, Government Resolution, Government Notification etc. issued from time to time regarding powers of relaxation in Development Control

and Promotional Regulations, the above provision shall prevail.”

34) In our view, the discretion conferred by Regulation 2.4 of UDCPR must be exercised on a case-to-case basis. The pertinent words ‘over and above podium garden’ must be read in context. If read in context, the intention of the subordinate legislation will be clear. That is, where larger ROS is mandated and has to be provided at the podium level, the minimum required ROS shall be ‘clearly open to sky’, even where it is on ‘ground over and above podium garden’. This means that 100% ROS can be provided on podium level, provided it is entirely open to sky. An examination of the Regulations 10.10.2(3)(vi), 9.13, 3.4.1(iii) and 3.4.7 read with Regulation 1.3(103) make it evident that the words ‘over and above podium garden’ are meant to permit the entire ROS to be provided at the podium level, provided the podium garden is also provided.

35) Considering Regulations 1.3(76) and 1.3(103) which define ‘layout open space’/ROS and ‘podium’ respectively, we find that the definition of ROS makes no reference to the words such as ‘natural ground’, ‘mother earth’, ‘virgin soil’, ‘at-grade location’, nor does it prohibit ROS from being provided at the podium level. Thus, where words necessary to demonstrate the intention of the legislature are not statutorily provided, they cannot be introduced or read into the definition in the UDCPR by implication. It is trite law that where a statute or a set of Regulations

contains two different definitions or similar expressions, the legislature is presumed to have intended different meanings and Courts cannot treat such expressions as interchangeable unless the statutory context compels it.

36) We further note that, in Regulation 10.10.2(3)(vi), the words ‘in a Condominium/plot area’ are used with a clear intent to distinguish such areas from the Co-operative Housing Societies. In the present case, Respondent Nos.3 to 7 are Co-operative Housing Societies and not Condominiums.

37) The grant of concession in law, does not amount to a grant of exemption and the grant of concession is an essential ingredient of a planning discretion. In our view, the grant of concession to provide ROS at the podium level furthers compliance with the requirement to provide such spaces in the redeveloped plot, without violating health safety, fire safety, structural safety or public safety of either the inhabitants or the neighborhood.

38) We find that the Petitioner’s contentions are adequately answered in the replies filed by Respondent Nos. 3 to 7, in which the Respondents have set out the planning constraints encountered by the developers in the redevelopment projects. There is no material on record furnished by the Petitioner to negate these constraints demonstrated by Respondent No.4. The Petitioner has not brought out any material from record to show that, planning constraints with regard to (i) the height of

the new buildings be restricted to 130 meters, (ii) Road setback area required to be surrendered to NMMC reducing the ground coverage, (iii) the rehabilitation tenement area mandated under Regulation 10.10.2.2(A) and (iv) the number of parking spaces for two wheelers and four wheelers required to be provided under the UDCPR were concocted, imaginary or false constraints set out by the developer and sanctioned by the NMMC.

39) Similarly, for Respondent Nos. 3 and 5 to 7 the Petitioner has neither furnished any material nor even asserted that the application seeking concession was based on concocted data or an imaginary constraint demonstrated in the said redevelopments. According to us, this alone would be sufficient to dismiss the Petition. We, however, also propose to consider the legal issue raised by the Petitioner.

40) The next issue raised by the Petitioner is that the *non obstante* clause in Regulation 10.10.2(3)(vi) contains overrides all other regulations in UDCPR including Regulations 2.4, 3.4.1, 3.4.7 and 9.13.

41) In our view, the argument of the petitioner that Regulation 2.4 and 3.4.1(iii) do not apply on the strength of Regulation 10.10, deserves to be rejected, because (a) If Regulation 2.4 is held inapplicable, the entirety of Chapter 10 would become unworkable and (b) The use of the words 'notwithstanding' in Regulation 10 cannot be read to exclude all other provisions of the UDCPR. It must be applied harmoniously and only in a case of conflict between a provision set out in Chapter 10 and another

provision of the UDCPR.

42) The Hon'ble Supreme Court in the case of *Mohd. Abdul Samad vs. State of Telangana & Anr.*, reported in (2025) 2 SCC 49, in paragraphs 81 to 87, held that a *non obstante* clause is usually appended to a section in the beginning, with a view to give the enacting part of the section, an overriding effect, in case of conflict, over the provision or enactment mentioned in the non obstante clause. Referring to the case of *Aswini Kumar Ghosh versus Arabinda Bose reported in (1952) 2 SCC 237*, the court held that it is only when the enacting part of the statute cannot be read harmoniously with what is stated in the *non obstante* clause that the *non obstante* clause would yield to what is stated in the enacting part.

43) Thus, Regulation 10.10.2(3)(vi) must necessarily yield to the other enacting provisions of the UDCPR, and cannot override them.

44) The distinction between Regulation 3.4.1(iii) and Regulation 10.2(3)(vi) is that, in non CIDCO areas, no ROS is required where the land is less than 4000 sq.mts., and only 10% ROS is required for land having an area of 4000 sq. meters. Whereas in CIDCO areas, 10% ROS is required to be provided once the land area exceeds 2500 sq. meters and 15% is required to be provided once the land exceeds 4000 sq. meters.

45) The Petition itself notes that, the NMMC has used the Regulation 2.4 of UDCPR on a case-to-case basis. The Petition itself notes this fact in paragraph No. 7 noting that, of the seven plots, Respondent Nos.

3 to 7 namely five plots have been granted these concessions, whereas the other two plots were not granted such concession. This also indicates that the Authority applied its mind while granting concession.

46) The Petitioner has not brought any material to negate the factual matrix demonstrated by the Respondents. Moreover, we find merit in the contention of Mr. Godbole that the Petitioner has laid no factual foundation to support his contention that, 'if no ROS is provided at the ground level, the residence of the redeveloped societies would crowd public open spaces'. We find that this narrative of the Petitioner is only a bare assertion, without any substantiation thereof.

47) The reliance placed by the Petitioner on the order dated 13 September 2022 passed by the NGT is also of no avail to him, because the EC for the redevelopment of the said land was issued on 30th August 2022 and the order of 13th September 2022 does not apply retrospectively.

48) Having perused the record, we find that, all the redevelopments undertaken by Respondent Nos.5 to 7 have obtained all permissions required including EC. We find no material on record to suggest that these permissions have been obtained on the basis of false and/or fabricated documents and/or by submitting false reports.

49) In the light of the foregoing, the word 'notwithstanding' in Chapter 10, cannot be read to include the application of the General Regulations contained in Chapters 1, 2 and 3 of the UDCPR. The general

provisions of the UDCPR continue to apply even to city specific development under Chapter 10, to the extent that they do not conflict one another. The Petitioner has failed to demonstrate any perversity in the exercise of powers by the Planning Authority under Regulation 2.4 of the UDCPR, such as would warrant an intervention by this Court.

50) We place on record several factors that weigh against the Petitioner. The Petitioner has no expertise in the field, holds no qualification in Town Planning, and possesses no special knowledge of building construction. Despite this, when the Corporation invited him to join the committee and assist it, he declined. There is no explanation for his failure to raise the issue earlier, a circumstance that supports the Respondents' contention on delay and laches. Further, he has selected only five societies, namely Respondent Nos. 3 to 7 and not all the projects that were granted concessions concerning open spaces. The Petition is vague and devoid of particulars as to how the concessions granted were arbitrary and ought never to have been sanctioned. These observations lend credence to the Respondents' assertion that the Petitioner is motivated by publicity. We express no view on whether his actions were, in fact, well-intentioned.

51) Public-spirited individuals who make effort of filing such Petitions often do so only to draw the Court's attention to lacunae on the part of Authorities who frequently keep their decisions opaque, which gives rise to suspicion and drives the public-spirited individuals to file such

Petitions. The assertions in the Petition make it abundantly clear that the Petitioner's queries were responded to belatedly and vaguely, and that certain information sought in the RTI Applications was never divulged. The State Authorities must be transparent in their functions. They cannot play hide and seek with the public. If their decisions are substantiated, they ought to have no reason to shield them from disclosure. We are conscious that, at times, such RTI Applications are made only to create doubt and to threaten the developer with litigation, with the view to extorting money from them.

52) Civic participation is fundamental to the thriving of a democracy. It fosters a sense of ownership and responsibility amongst citizens and strengthens their commitment to the collective welfare of the society. By permitting them to voice their concerns and hold elected officials accountable, the principles of democracy are upheld and the foundation of nation's governance are reinforced.

53) This may be addressed by the Civic Authorities by convening meetings to discuss local issues, receive grievances and propose solutions. Such meetings would provide a platform for direct interaction between citizens and elected officials, fostering dialogue and collaboration in addressing community needs. The State may consider establishing community oversight committees comprising of diverse stakeholder groups, to monitor and evaluate Authorities activities and ensure transparency and

accountability. Where meetings are not feasible, digital platforms may enable the civic authorities and elected representatives to communicate and coordinate the redressal of civic issues efficiently. The State and Civic Authorities must, in both letter and spirit, honour and give effect to the principles of 'communication' and 'openness'.

54) Be the as it may, in the light of the above discussion we do not find any merit in the Petition and accordingly dismiss it.

55) In view of the disposal of Petition, the Interim Application filed therein does not survive and is accordingly disposed off.

(KAMAL KHATA, J.)

(A.S. GADKARI, J.)